

IN THE MATTER OF LICENSE NO. 378437
Issued to: JOHN DEAN BRUSH

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1939

JOHN DEAN BRUSH
Z-509974

This appeal has been taken in accordance with Title 46 United States code 239 (g) and title 46 Code of Federal Regulations 137.30-1.

By order dated 12 January 1971, an Administrative Law Judge of the United States Coast guard at Mobile, Alabama, suspended appellant's license for one month plus two months on twelve month' probation upon finding him guilty of inattention to duty. The specification found proved alleges that while serving as Master of SS RACHEL V under authority of the license above captioned, on or about 7 December 1970, Appellant, while the vessel was navigating in the vicinity of DAVAO CITY, Phillipine Islands, failed to exercise proper supervision over the movements of the vessel thereby contributing to a collision between the vessel and a pilot boat.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the Second Mate of the vessel, a report of accident filed by Appellant, and voyage records of RACHEL V.

In defense, Appellant made an unsworn statement.

At the end of the hearing, the Administrative Law Judge rendered on oral decision in which he concluded that the charge and specification had been proved. The Judge then entered an order suspending Appellant's license for a period of one month plus two months on twelve months' probation.

The entire decision was served on 14 January 1971. Appeal was timely filed on 3 February 1971. Although appellant had until 6 May 1971 to add to his original notice of appeal he has not done so.

FINDINGS OF FACT

On 7 December 1970, Appellant was serving as Master of SS RACHEL V and acting under authority of his license while the ship was approaching Davao City, P.R. The local pilot boat collided with the propeller of RACHEL V and sank, with no loss of life.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) Appellant did not realize the seriousness of the charge and therefore did not have sufficient time to prepare a defense.
- (2) The evidence is not sufficient to support a charge of inattention to duty.
- (3) Appellant's authority and responsibility was subjugated to that of the compulsory pilot.

APPEARANCE: Lionel L. Hayden, Esq., Mobile, Alabama.

OPINION

I

The record is clear that appellant acknowledged he was fully aware of the charges against him, the nature of the proceedings, the possible results thereof, and all of his rights in connection therewith. This was occasioned when he was served with the notice of hearing and again when the hearing was convened. After the Investigating Officer's opening statement and in replies to the Judge the Appellant signified his complete understanding of such rights. The regulatory procedures were complied with and in no way can Appellant imply any deliberate denials of due process.

It is also very difficult for me to accept the fact that an experienced ship master, who has been licensed by the Coast Guard after examination in related subjects, was so overawed by the proceedings to such an extent that he was utterly confused thereby. Additionally, it is difficult for me to believe that a Master, charged by statute and by his employer with considerable responsibility is lacking sufficient business acumen to recognize and evaluate matters of such vital importance to his own career, particularly after being fully advised.

II

The un rebutted evidence adduced in this case is sufficient to meet the requirements of these proceedings. Findings need only be supported by substantial evidence of a reliable and probative character, 46 CFR 137.20-95. The record is clear that appellant was aware of the conditions and circumstances surrounding the operation of the pilot boat on his starboard side, that he permitted the vessel to turn hard left thereby swinging his vessel's stern to starboard while under full power ahead, and that he never looked to see if his vessel's movements were safe. It should be obvious that a prudent Master, who is giving his attention to the safety of his vessel, would find the actions of a Pilot highly suspect when the Pilot disembarks from a small boat alongside to starboard, and without even a glance from the empty wings of the bridge to assure clearance, immediately orders, "Ahead full, left full rudder." Blindly accepting the Pilot's actions is a failure to meet his responsibilities as Master of the vessel and constitutes inattention to duty.

I have discussed the Master-Pilot relationship in numerous prior decisions and Appellant's contention that his authority and responsibility was subjugated to that of the pilot is wholly without merit. The Master is ultimately responsible for the safety of his ship and does not surrender his authority whether the Pilot is voluntary or compulsory. Neither the presence of the Pilot nor his negligence relieved the Master from responsibility for the safety of his ship when there was a danger which he observed, or should have observed, in sufficient time to take action to avoid the collision. See Decision on Appeal Nos. 830, 1304, 1891 and included citations.

CONCLUSION

It is concluded that the findings are supported by substantial evidence of a reliable and probative character to support a charge of inattention to duty. I also conclude that the outright suspension order and the probation order was most reasonable.

ORDER

The order of the Administrative Law Judge dated at Mobile, Alabama on 12 January 1971 is AFFIRMED.

C.R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 10th day of June 1973.

INDEX

Due process

No denial when party refused time to prepare defense or
consult counsel

Duty

Inattention to

Findings of fact

Substantial evidence required

Inattention to duty

Failure to abrogate pilot's order

Master

Duties and responsibilities of
Duty to supervise pilot
Pilot relationship
Standard of care required by

Pilots

Master relations with